

BEFORE THE

## Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations )

(Lowry City, Missouri) )

MM Docket No. \_\_\_\_\_

RM- \_\_\_\_\_

To: Chief, Allocations Branch

**MOTION TO DISMISS PETITION FOR RULE MAKING**

The Clair Group ("Clair"), licensee of KMFC(FM), Centralia, Missouri, Lake Area Educational Broadcasting Foundation ("Lake Area"), licensee of KCVJ(FM), Osceola, Missouri, and Bick Broadcasting Co. ("Bick"), licensee of KSDL(FM), Sedalia, Missouri (collectively, "Movants"), by the undersigned attorneys, hereby request that the Commission dismiss the Petition for Rule Making filed by Bott Communications, Inc. ("Bott") on March 2, 2000 seeking the allocation of Channel 285A at Lowry City. In support of their Motion, the Movants state as follows:

1. The Movants are parties to RM-9687, MM Docket No. 99-299 (Osceola and Sedalia, Missouri). As originally filed, that proceeding sought, inter alia, to substitute Channel 285A for Channel 222A at Osceola, Missouri. Prior to the issuance of a Notice of Proposed Rule Making in that proceeding, however, the proposal was amended to specify Channel 262A, rather than 285A. The Commission's Notice of Proposed Rule Making, DA-99-2101 (released October 8, 1999) recited this procedural history and sought Comments and Counterproposals to the requested substitution. Bott filed a Counterproposal in that proceeding proposing the allocation

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of Channel 262A at Wheatland, Missouri. In their Opposition to Bott's Counterproposal, Movants requested that the conflict between their proposal and Bott's Counterproposal be resolved by the substitution of Channel 285A, the channel originally specified in the proceeding, for Channel 222A at Osceola, leaving Channel 262A available for Wheatland should the Commission determine that Wheatland warranted an allocation at all.<sup>1</sup>

2. The instant Petition for Rule Making seeks to utilize Channel 285A so that it is no longer available to resolve the conflict in RM-9687. The Petition claims that the proposal to substitute Channel 285A, rather than 262A, for Channel 222A at Osceola is a late-filed counterproposal in that proceeding which does not preclude the filing of the instant Petition for Rule Making. This assertion is in error. The Commission has held that alternate channels for the communities set forth in an initial rule making petition and/or counterproposal can be advanced, at the Reply Comment stage, in response to a counterproposal, and will be protected from later-filed rule making petitions. See e.g., Amendment of Section 73.202(b), Table of FM Broadcast Stations (Pinewood, South Carolina), 5 FCC Rcd 7609 (1990). Proposals which introduce additional communities must be advanced in the initial comment period. See e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Corpus Christi and Three Rivers, Texas), 11 FCC Rcd 517 (1995). In as much as it is Bott, not Movants, who introduced the community of Lowry City,<sup>2</sup> it is Bott's instant Petition that is an untimely counterproposal which must be rejected.

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<sup>1</sup> In their Opposition to Counterproposal, the Movants argued that Wheatland, Missouri did not constitute a community for allotment purposes.

<sup>2</sup> Movants reserve the right to file Comments in opposition to the instant Petition should this Motion to Dismiss be denied. Specifically, Movants, by filing this Motion, do not concede that Lowry City constitutes a community for allotment purposes.

3. Rejection of Bott's Petition is particularly appropriate in this situation as Bott had actual notice that Channel 285A was available for use as an alternate channel to the proposal for Channel 262A at Osceola. As noted above, the Notice of Proposed Rule Making in RM-9687 specifically stated that Channel 285A had been proposed and that the proposal had been amended to specify Channel 262A. When Bott filed its Counterproposal in that proceeding seeking to allocate Channel 262A to Wheatland, it should have anticipated that the Movants would seek an alternate channel to settle the conflict with the Counterproposal. The logical choice of channel was Channel 285A which had already been studied and shown in an attachment to the original Petition for Rule Making in RM-9687 to be available for use at Osceola.

Accordingly, Movants respectfully request that the Commission dismiss the instant Petition for Rule Making and proceed to expeditiously act on the proposal pending in RM-9687.

Respectfully submitted,

**THE CLAIR GROUP**

**LAKE AREA EDUCATIONAL  
BROADCASTING FOUNDATION**

**BICK BROADCASTING CO.**

By 

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Dated: March 15, 2000

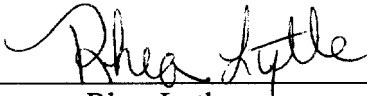
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**CERTIFICATE OF SERVICE**

I, Rhea Lytle, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that, on this 15th day of March, 2000, I caused to be served by first class U.S. mail, postage prepaid, copy of the foregoing **"Motion to Dismiss Petition for Rule Making"** on the following:

\*Ms. Kathleen Scheuerle  
Federal Communications Commission  
445 12th Street, S.W.  
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\_\_\_\_\_  
Rhea Lytle

\* Via hand delivery